

# REPLY EXHIBIT A

# **Condensed Transcript**

## **Deposition of Mark Andrew Hartman**

**taken on  
6/3/2009**

**State of Alabama  
v.  
Watson Laboratories, Inc., etc., et al**

**Case No. CV-2005-219**



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Mark Andrew Hartman  
June 3, 2009

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The videotaped deposition of MARK TIMOTHY HARTMAN was taken before Cornelia J. Baker, Certified Court Reporter, ABCR 290, and Certified Shorthand Reporter, as Commissioner, on June 3, 2009, commencing at approximately 10:28 a.m., at the Dunhill Hotel, 237 North Tryon Street, Charlotte, North Carolina.

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IN THE CIRCUIT COURT OF  
MONTGOMERY COUNTY  
STATE OF ALABAMA

In the Matter of:

ALABAMA MEDICAID

PHARMACEUTICAL AVERAGE	MASTER DOCKET
WHOLESALE PRICE LITIGATION	NO. CV-2005-219

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This Document Relates to:

State of Alabama v.

Watson Laboratories, Inc.

No. 2005-219.74

State of Alabama v.

Watson Pharma, Inc.

No. 2005-219.75

State of Alabama v.

Watson Pharmaceuticals, Inc.

No. 2005-219.76

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Mark Andrew Hartman  
June 3, 2009

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3                   TRAVIS COUNTY, TEXAS

                  19TH JUDICIAL DISTRICT

4                   CAUSE NO. D-1-GV-001566

5   The State of Texas, ex rel.,

          Ven-A-Care of the Florida Keys, Inc.,

6   v.

          Alpharma USPD f/k/a

7   Barre-National, Inc., et al.

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                  IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

                  STATE OF HAWAII

12   State of Hawaii

13   v.       Civil No. 06-1-0720-04-EEH

14   Abbott Laboratories, Inc., et al.

15   State of Hawaii

16   v.       Civil No. 07-1-1639-09-EEH

          Schering Corporation;

          DOE Corporations 1-100;

17   DOE Entities 1-100.

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2 IN THE CHANCERY COURT OF

3 RANKIN COUNTY, MISSISSIPPI

4 20TH CHANCERY COURT DIVISION

5 State of Mississippi

6 v. Civil Action No. G2009-65597

7 Watson Pharma, Inc.

8

9 State of Mississippi

10 v. Civil Action No. G2009-65629

11 Watson Pharmaceuticals, Inc.

12

13 State of Mississippi

14 v. Civil Action No. G2009-65630

15 Watson Laboratories, Inc.

16 \* \* \* \* \*

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18 STATE OF FLORIDA

19 CIRCUIT COURT FOR LEON COUNTY

20 98-3032-G

21

22 \* \* \* \* \*

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2 \* \* \* \* \*  
3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF MASSACHUSETTS  
5  
6 IN RE PHARMACEUTICAL INDUSTRY  
7 AVERAGE WHOLESALE PRICE LITIGATION  
8 MDL 1456  
9 Master File No. 1456  
10 Subcategory Case No. 07-12141-PBS  
11 This Document Relates To:  
12 State of Iowa  
13 v.  
14 Abbott Laboratories, et al.  
15 The City of New York, et al.  
16 v.  
17 Abbott Laboratories, et al.  
18  
19 \* \* \* \* \*  
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21  
22  
23

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1 price; you're aware of that, aren't you, sir?  
2 MR. MATTHEWS: Objection.  
3 A Again, we published something  
4 to them that was the same as we published to  
5 the wholesalers. I did not dictate what FDB  
6 published.  
7 Q Right.  
8 A If it was the same, then...  
9 Q But you have knowledge that it  
10 was the same number?  
11 A It was often the same, yes.  
12 Q Can you give the Jury an  
13 example where Watson reported an AWP to First  
14 DataBank and First DataBank in turn published  
15 a different number? Can you give the Jury  
16 one example of that happening?  
17 A No, sir.  
18 Q So it's fair to say, to the  
19 best of your knowledge, that the AWP price  
20 that Watson reported to First DataBank was  
21 the same price that First DataBank published  
22 for Watson drugs, correct?  
23 MR. MATTHEWS: Objection.

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1 A Yes.  
2 Q And is the same true for the  
3 WAC price, sir?  
4 MR. MATTHEWS: Objection.  
5 A Again, we published a WAC price  
6 as well.  
7 Q Watson reported a WAC price to  
8 First DataBank; First DataBank in turn  
9 published that WAC price, correct, sir?  
10 A I don't know. In some cases  
11 they reported WACs, some cases they did not  
12 report WAC, is my understanding.  
13 Q Between 1997 and 2002, it's  
14 your testimony that you're not sure whether  
15 or not First DataBank published WAC prices  
16 for Watson drugs?  
17 A My recollection is that in some  
18 cases, the WACs were reported, and in some  
19 cases they were not, whether they were Watson  
20 products or other companies products, whether  
21 they reported WACs or not.  
22 Q Well, I'm just talking about  
23 Watson products.

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1 A Okay. Again, as far as I  
2 recall, most products were published, if we  
3 sent them a WAC. There was a period of time  
4 when I don't believe we sent WACs to them.  
5 Q Do you know whether or not  
6 First DataBank continued to publish a WAC for  
7 Watson drugs even though Watson was not  
8 reporting WAC prices to First DataBank?  
9 A I do not know, sir.  
10 Q Was anybody in your division in  
11 charge of monitoring the prices that First  
12 DataBank published for Watson drugs?  
13 A We had a pricing contracts  
14 group that would keep track of that, yes,  
15 sir.  
16 Q You are aware, sir, that during  
17 your time at Watson that the AWPs and WACs  
18 that First DataBank published for Watson  
19 drugs were relied upon state Medicaid  
20 agencies in their reimbursement formulas; are  
21 you aware of that?  
22 MR. MATTHEWS: Objection.  
23 A Yes.

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1 Q In fact, that's one of the  
2 reasons that Watson reported prices to First  
3 DataBank was so state Medicaid agencies could  
4 rely on those prices when they reimbursed  
5 providers for Watson drugs, correct?  
6 MR. MATTHEWS: Objection.  
7 A Yeah. I mean, we reported AWPs  
8 and WACs and had actual -- that were prices  
9 that were, again, suggested prices to them.  
10 We do not report actual net prices.  
11 Q And I'll get to that in a  
12 minute. But one of the reasons that Watson  
13 reported WACs and AWPs to First DataBank was  
14 because Watson knew that state Medicaid  
15 agencies would rely on those prices when  
16 reimbursing providers for Watson drugs,  
17 correct?  
18 MR. MATTHEWS: Objection.  
19 A All pharmacies relied on AWPs  
20 and third-party, whether it's states or  
21 whether it's managed care organizations  
22 relied on AWP at that time to report -- to do  
23 their drug reimbursement at pharmacy.

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11 (Pages 38 to 41)

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<p>1 it? It's possible?</p> <p>2 A It's possible, depending again</p> <p>3 on each state's reimbursement structure.</p> <p>4 Q And you're not familiar with</p> <p>5 Alabama's reimbursement formula, correct?</p> <p>6 A I'm not familiar with the</p> <p>7 specific reimbursement formula, no, sir.</p> <p>8 Q You're not familiar with the</p> <p>9 reimbursement formulas for any of the state</p> <p>10 Medicaid agencies; is that correct?</p> <p>11 A Sir, I understand that many of</p> <p>12 the states reimbursed on an AWP-minus basis</p> <p>13 or some states also reimbursed on an AWP-plus</p> <p>14 basis, so I understand there was a variance</p> <p>15 state by state.</p> <p>16 Q All right, sir. Let me show</p> <p>17 you what I'm going to mark as Exhibit 5 to</p> <p>18 your deposition.</p> <p>19 (Whereupon Plaintiff's Exhibit</p> <p>20 No. 5 was marked for</p> <p>21 identification and attached</p> <p>22 hereto.)</p> <p>23 (Witness reviewed document.)</p> <p style="text-align: right;">Page 90</p>	<p>1 meeting, the intention of the program is to</p> <p>2 provide Rite Aid Corporation the opportunity</p> <p>3 to earn increased profitability via lucrative</p> <p>4 spreads and incremental rebates on the entire</p> <p>5 family of Watson's oral contraceptives.</p> <p>6 Q Watson's goal of entering into</p> <p>7 this program with Rite Aid was to provide</p> <p>8 Rite Aid with the opportunity for increased</p> <p>9 profitability on Watson drugs, correct?</p> <p>10 MR. MATTHEWS: Objection.</p> <p>11 A It was to increase their</p> <p>12 profitability on the total contraceptive</p> <p>13 line, sir.</p> <p>14 Q Which would include Watson</p> <p>15 drugs, correct?</p> <p>16 A Yes, sir, in this case.</p> <p>17 Q And the way -- or one way that</p> <p>18 Watson wanted to increase Rite Aid's</p> <p>19 profitability on Watson drugs was through</p> <p>20 lucrative spreads; is that correct, sir?</p> <p>21 MR. MATTHEWS: Objection.</p> <p>22 A That's the terminology used,</p> <p>23 yes, sir.</p> <p style="text-align: right;">Page 92</p>
<p>1 A Okay.</p> <p>2 Q Take a second and look at that,</p> <p>3 sir. I'll tell you that it is a letter</p> <p>4 authored by you while at Watson Laboratories</p> <p>5 to a director of purchasing and marketing at</p> <p>6 the Rite Aid Corporation dated December 2nd,</p> <p>7 1997; do you see that?</p> <p>8 A Yes, sir.</p> <p>9 Q Is that your signature at the</p> <p>10 bottom of this letter?</p> <p>11 A Yes, sir.</p> <p>12 Q And your letter discusses Oral</p> <p>13 Contraceptive Compound Management Program,</p> <p>14 correct?</p> <p>15 A That's correct.</p> <p>16 Q This is the proposed agreement</p> <p>17 between Watson and the Rite Aid Corporation</p> <p>18 for Watson drugs, correct?</p> <p>19 A That is correct.</p> <p>20 Q Can you read the second</p> <p>21 sentence of that letter to the Jury, please,</p> <p>22 sir?</p> <p>23 A As discussed during our last</p> <p style="text-align: right;">Page 91</p>	<p>1 Q That's your terminology.</p> <p>2 Lucrative spreads is the terminology you used</p> <p>3 to explain to Rite Aid how you could increase</p> <p>4 Rite Aid's profitability on Watson drugs; is</p> <p>5 that correct, sir?</p> <p>6 MR. MATTHEWS: Objection.</p> <p>7 A Yes. That's what I wrote, yes,</p> <p>8 sir.</p> <p>9 Q You also wrote that you could</p> <p>10 increase Rite Aid's profitability by the use</p> <p>11 of incremental rebates, correct?</p> <p>12 A That is correct.</p> <p>13 Q And again, those are rebates</p> <p>14 that the more Watson drugs that Rite Aid</p> <p>15 sells, the higher the rebate that Watson pays</p> <p>16 to Rite Aid, correct?</p> <p>17 A Yes.</p> <p>18 Q And no matter what that rebate</p> <p>19 is, no matter how high it is, it's never</p> <p>20 reported to First DataBank, correct?</p> <p>21 A Correct.</p> <p>22 MR. MATTHEWS: Objection.</p> <p>23 A Excuse me, correct.</p> <p style="text-align: right;">Page 93</p>

24 (Pages 90 to 93)

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<p>1 is.</p> <p>2 Q Or it could be an AWP with a</p> <p>3 higher spread, correct?</p> <p>4 MR. MATTHEWS: Objection.</p> <p>5 A It could be a higher AWP in</p> <p>6 conjunction with a lower contract price,</p> <p>7 which would create a greater spread.</p> <p>8 Q A higher AWP spread, correct?</p> <p>9 MR. MATTHEWS: Objection.</p> <p>10 A As you appear to be defining</p> <p>11 it, that's the difference between the AWP</p> <p>12 that's listed and the contract price or</p> <p>13 direct price that the wholesaler and retail</p> <p>14 customer buys it for, yes.</p> <p>15 Q Right. And that seems to be</p> <p>16 what this special concern is addressing,</p> <p>17 correct?</p> <p>18 MR. MATTHEWS: Objection.</p> <p>19 A Again, it appears to be talking</p> <p>20 about the delta between the two, yes, sir.</p> <p>21 Q All right. And you see he goes</p> <p>22 on to say, If you are confused with AWP</p> <p>23 pricing and spreads, give sales training a</p> <p style="text-align: right;">Page 182</p>	<p>1 Q The last thing he says is what?</p> <p>2 A Good selling.</p> <p>3 Q Are you familiar -- when you</p> <p>4 were with Watson, were you familiar with</p> <p>5 FULs?</p> <p>6 A Federal Upper Limits, MACs,</p> <p>7 yes, sir.</p> <p>8 Q Do you know how the Federal</p> <p>9 Upper Limit worked?</p> <p>10 A It was, you know -- it's my</p> <p>11 understanding the Federal Upper Limit was</p> <p>12 established based off of existing products,</p> <p>13 multisource products that are on the market,</p> <p>14 had to be at least three products on the</p> <p>15 market, two generics and a brand, in order to</p> <p>16 establish a MAC or a Federal Upper Limit.</p> <p>17 Q You know that sometimes the</p> <p>18 Federal Upper Limit was also called a MAC,</p> <p>19 correct?</p> <p>20 A Yes, sir.</p> <p>21 MR. MATTHEWS: Objection.</p> <p>22 THE WITNESS: Oh, sorry.</p> <p>23 Q Is that correct?</p> <p style="text-align: right;">Page 184</p>
<p>1 call. Do you see that, bottom of the third</p> <p>2 paragraph?</p> <p>3 A I don't see that, no, sir. If</p> <p>4 you'd -- bottom of the -- sorry.</p> <p>5 Q It's okay.</p> <p>6 A I might be looking at the wrong</p> <p>7 side.</p> <p>8 Q Do you see the italicized part</p> <p>9 that starts with "this"?</p> <p>10 A Okay, okay. Right.</p> <p>11 Q Can you read that to the Jury,</p> <p>12 please, sir?</p> <p>13 A Okay. Yeah. If you are</p> <p>14 confused with AWP pricing and spreads, give</p> <p>15 sales training a call.</p> <p>16 Q And then what's the last -- the</p> <p>17 very last thing he says under, Special</p> <p>18 concern?</p> <p>19 A Thank you for your help and</p> <p>20 cooperation with this project. This</p> <p>21 agreement demonstrates Schein Pharmaceuticals</p> <p>22 continued commitment to long-term care</p> <p>23 market. Good selling.</p> <p style="text-align: right;">Page 183</p>	<p>1 MR. MATTHEWS: Objection.</p> <p>2 A Yes.</p> <p>3 Q When you were at Watson, was</p> <p>4 Watson concerned with whether or not there</p> <p>5 would be a FUL or a MAC on its drugs?</p> <p>6 A Can you define what you mean</p> <p>7 "concerned"?</p> <p>8 Q Did you pay any attention to</p> <p>9 whether or not Watson drugs were FUL'd or</p> <p>10 MAC'd?</p> <p>11 A We would look at which</p> <p>12 products, how they were reimbursed and which</p> <p>13 ones had a MAC on them, yes, sir.</p> <p>14 Q And why would you look to see</p> <p>15 which ones had a MAC?</p> <p>16 A The MAC would be, you know, the</p> <p>17 Maximum Allowable Cost that a pharmacist</p> <p>18 would be reimbursed on a product, so we</p> <p>19 wanted to make sure that our contract prices</p> <p>20 allowed them to at least break even.</p> <p>21 Q Right. You wanted to make sure</p> <p>22 that your contract prices did not exceed the</p> <p>23 FUL or the MAC, correct?</p> <p style="text-align: right;">Page 185</p>

47 (Pages 182 to 185)

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<p>1 A That's correct.</p> <p>2 Q As you -- I mean, the best case</p> <p>3 scenario, you wanted the provider to make a</p> <p>4 profit on a Watson generic drug even if it</p> <p>5 was FUL'd or MAC'd, correct?</p> <p>6 MR. MATTHEWS: Objection.</p> <p>7 A In a multisource market and</p> <p>8 generic competitor market where there's</p> <p>9 multiple payers, you always want to make sure</p> <p>10 that you're competitive. So with that</p> <p>11 regard, if there was a product with a FUL or</p> <p>12 a MAC, we would want to make sure that our</p> <p>13 product was competitive with the other</p> <p>14 multisource products that were out there.</p> <p>15 Q And one way you'd do that is</p> <p>16 set a contract price that was lower than the</p> <p>17 FUL or the MAC, correct?</p> <p>18 MR. MATTHEWS: Objection.</p> <p>19 A Yes.</p> <p>20 Q And the difference between the</p> <p>21 contract price and the FUL or the MAC for a</p> <p>22 Watson drug could be termed as "the spread"</p> <p>23 to that provider, correct?</p> <p style="text-align: right;">Page 186</p>	<p>1 THE VIDEOGRAPHER: We're going</p> <p>2 back on the Record at</p> <p>3 2:54 p.m.</p> <p>4 MR. MATTHEWS: Clint, just</p> <p>5 before we go on, for the</p> <p>6 Record, I have now had an</p> <p>7 opportunity to review the</p> <p>8 unredacted version of what</p> <p>9 we've marked today as</p> <p>10 Exhibit 16 to Mr. Hartman's</p> <p>11 deposition, which is a</p> <p>12 document Bates No.</p> <p>13 WATL000131848. Based on my</p> <p>14 review of that document, I</p> <p>15 believe it was</p> <p>16 appropriately redacted.</p> <p>17 The information related to</p> <p>18 Watson's gross profit,</p> <p>19 which as you know, Judge</p> <p>20 Price in the Alabama case</p> <p>21 has already ruled is not</p> <p>22 admissible at trial at</p> <p>23 least in the other</p> <p style="text-align: right;">Page 188</p>
<p>1 MR. MATTHEWS: Objection.</p> <p>2 A The way -- it could be the</p> <p>3 margin that the -- that the pharmacists could</p> <p>4 make.</p> <p>5 Q The difference between what the</p> <p>6 provider paid to acquire the drug and what</p> <p>7 the provider was reimbursed for the drug by</p> <p>8 state Medicaid agencies, correct?</p> <p>9 MR. MATTHEWS: Objection.</p> <p>10 A Would again be the profit that</p> <p>11 they would make on the product, yes, sir.</p> <p>12 Q Which is sometimes called the</p> <p>13 spread, correct?</p> <p>14 A Many have called that the</p> <p>15 spread, yes, sir.</p> <p>16 MR. CARTER: All right. Let's</p> <p>17 take a break. I have a few</p> <p>18 more documents I need to go</p> <p>19 through.</p> <p>20 THE WITNESS: Okay.</p> <p>21 THE VIDEOGRAPHER: We're going</p> <p>22 off the Record at 2:42 p.m.</p> <p>23 (Brief recess)</p> <p style="text-align: right;">Page 187</p>	<p>1 Defendant trials. And it's</p> <p>2 our position that we are</p> <p>3 entitled to redact that,</p> <p>4 and so therefore, I'm not</p> <p>5 going to be producing an</p> <p>6 unredacted document at this</p> <p>7 time.</p> <p>8 I would also note</p> <p>9 for the Record that</p> <p>10 Mr. Hartman testified that</p> <p>11 he had not seen the</p> <p>12 document before and did not</p> <p>13 know -- so even if you are</p> <p>14 entitled to the document,</p> <p>15 there are no questions that</p> <p>16 he could answer about it</p> <p>17 based on his personal</p> <p>18 knowledge.</p> <p>19 MS. MOORE: I'm sorry, what was</p> <p>20 that exhibit again?</p> <p>21 MR. MATTHEWS: Sixteen, Hartman</p> <p>22 16.</p> <p>23 MR. CARTER: All right. Well,</p> <p style="text-align: right;">Page 189</p>



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<p>1       reimbursed for a Watson drug, correct?</p> <p>2                   MR. MATTHEWS: Objection.</p> <p>3               A    As stated before, we kept track</p> <p>4       of FULs and MACs and the -- our contract</p> <p>5       terms, a chargeback processes, the rebate</p> <p>6       structures, everything to make sure that we</p> <p>7       were not upside down from a margin standpoint</p> <p>8       at Watson; and also that the customer was not</p> <p>9       in a negative position in dispensing our</p> <p>10       products.</p> <p>11               Q    So the difference between what</p> <p>12       a provider paid to obtain the Watson drug</p> <p>13       versus what the provider was reimbursed for a</p> <p>14       Watson drug was something that Watson kept</p> <p>15       note of, correct?</p> <p>16               MR. MATTHEWS: Objection.</p> <p>17               A    We kept note of what our</p> <p>18       contract prices were compared to our</p> <p>19       competition by customer and by competitive</p> <p>20       bids situation, yes, sir.</p> <p>21               Q    And you also kept note of what</p> <p>22       providers were being reimbursed for Watson</p> <p>23       drugs, correct?</p> <p style="text-align: right;">Page 198</p>	<p>1                   MR. MATTHEWS: Objection.</p> <p>2               A    We would know what the -- if</p> <p>3       there's a MAC, what the MAC would be. If</p> <p>4       there's a -- you know, we know when our</p> <p>5       rebate percentages is fixed. Right?</p> <p>6               Q    Well, if there was a FUL in</p> <p>7       place, Watson would know what the FUL was,</p> <p>8       correct?</p> <p>9               MR. MATTHEWS: Objection.</p> <p>10               A    Yes.</p> <p>11               Q    Watson would try to set a</p> <p>12       contract price that was lower than the FUL in</p> <p>13       order to allow a provider to make a profit on</p> <p>14       Watson drugs, correct?</p> <p>15               MR. MATTHEWS: Objection.</p> <p>16               A    We would put a price that was</p> <p>17       below the FUL; otherwise, your product would</p> <p>18       not be dispensed. And thus it would be the</p> <p>19       only alternative may be an alternate brand,</p> <p>20       which was even more expensive; thus the</p> <p>21       patients and the states would end up paying a</p> <p>22       higher price.</p> <p>23               Q    A state's never going to pay</p> <p style="text-align: right;">Page 200</p>
<p>1                   MR. MATTHEWS: Objection.</p> <p>2               A    Again, it was common knowledge</p> <p>3       as to the reimbursement, but we could not</p> <p>4       determine what each customer was reimbursed,</p> <p>5       because every one of the customers has a</p> <p>6       different reimbursement mix. A CVS may have</p> <p>7       contracts with many managed care parties at a</p> <p>8       variety of degrees of rates. We do not have</p> <p>9       that knowledge because, again, it was</p> <p>10       something that due to confidentiality was</p> <p>11       that the customers are the only ones that</p> <p>12       know that. So our basis was comparing heavy</p> <p>13       competitive AWP and a competitive contract</p> <p>14       price in order to ensure that we were on an</p> <p>15       even playing field with our competitors.</p> <p>16               Q    Well, the Medicaid</p> <p>17       reimbursement formulas, those are not</p> <p>18       confidential, correct?</p> <p>19               A    No, sir.</p> <p>20               Q    And Watson would know what each</p> <p>21       of its customers were being reimbursed by</p> <p>22       state Medicaid agencies for Watson drugs,</p> <p>23       correct?</p> <p style="text-align: right;">Page 199</p>	<p>1       more than the FUL, is it, sir?</p> <p>2                   MR. MATTHEWS: Objection.</p> <p>3               A    No, sir.</p> <p>4               Q    The only way a state would pay</p> <p>5       less than a FUL is if Watson reported a price</p> <p>6       that was less than the FUL, correct?</p> <p>7               MR. MATTHEWS: Objection.</p> <p>8               A    I presume so, yes.</p> <p>9               Q    But Watson never reported a</p> <p>10       price to First DataBank that was less than</p> <p>11       the FUL; isn't that correct, sir?</p> <p>12               MR. MATTHEWS: Objection.</p> <p>13               A    Watson only reported AWP's, sir.</p> <p>14       We did not report FULs or contract pricing.</p> <p>15               Q    And Watson knew that if it</p> <p>16       reported an AWP to First DataBank that was</p> <p>17       less than the FUL, that states would pay on</p> <p>18       the lower AWP as opposed to the FUL; is that</p> <p>19       correct?</p> <p>20               MR. MATTHEWS: Objection.</p> <p>21               A    I do not know, sir, honestly.</p> <p>22               Q    You're aware that lots of state</p> <p>23       Medicaid agencies have what's called lower-of</p> <p style="text-align: right;">Page 201</p>

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<p>1 choice for that customer than if you were</p> <p>2 Medicaid reimbursable, yes, ma'am.</p> <p>3 Q Okay. So when a manufacturer's</p> <p>4 products are reimbursed by a Medicaid state</p> <p>5 that does use Wholesale Acquisition Cost, do</p> <p>6 you know how the Wholesale Acquisition Cost</p> <p>7 is used?</p> <p>8 MR. MATTHEWS: Objection.</p> <p>9 A Again, ma'am, I'm not sure how</p> <p>10 each state does it and whether they use that</p> <p>11 as a cost plus or a cost minus, I do not</p> <p>12 know.</p> <p>13 Q What do you mean when you say</p> <p>14 "cost plus or cost minus"?</p> <p>15 A Well, again, whether it is</p> <p>16 Wholesale Acquisition Cost plus a percentage</p> <p>17 or minus a percentage from that to determine</p> <p>18 their reimbursement.</p> <p>19 Q But you are familiar, I would</p> <p>20 take it, that there are states that have the</p> <p>21 AWP minus formulas, correct?</p> <p>22 A Yes, ma'am.</p> <p>23 Q And are you aware that Texas</p> <p style="text-align: right;">Page 210</p>	<p>1 A Yes, ma'am.</p> <p>2 Q And that e-mail appears to have</p> <p>3 come from a Vince Rinaudo; is that correct?</p> <p>4 A Yes, ma'am.</p> <p>5 Q Who is Vince Rinaudo?</p> <p>6 A As I mentioned Vince Rinaudo</p> <p>7 was a national account manager for Watson</p> <p>8 Laboratories who called on Wal-Mart.</p> <p>9 Q And Allen Slovsky, who is he?</p> <p>10 A Allen Slovsky was a director of</p> <p>11 sales at that point in time who Vince Rinaudo</p> <p>12 reported in to.</p> <p>13 Q The first sentence says that</p> <p>14 Wal-Mart is requesting a meeting, I assume</p> <p>15 with Watson personnel, correct?</p> <p>16 A I am assuming so, yes, ma'am.</p> <p>17 Q Do you recognize what is</p> <p>18 described here as the WAC pricing issue?</p> <p>19 A Again, ma'am, depending on the</p> <p>20 date, I'm not sure which product or products</p> <p>21 or product lines this is referring to. It's</p> <p>22 very difficult to take -- to tell from these</p> <p>23 two e-mail trails.</p> <p style="text-align: right;">Page 212</p>
<p>1 has an AWP minus compared to a wholesale cost</p> <p>2 plus formula?</p> <p>3 A Again, ma'am, I don't know the</p> <p>4 particular states. If you're telling me that</p> <p>5 that's what it is, then I believe you. But</p> <p>6 I...</p> <p>7 Q I want to show you Exhibit No.</p> <p>8 No. 21.</p> <p>9 (Whereupon Plaintiff's Exhibit</p> <p>10 No. 21 was marked for</p> <p>11 identification and attached</p> <p>12 hereto.)</p> <p>13 (Witness reviewed document.)</p> <p>14 Q Do you recognize this document?</p> <p>15 A It appears to be an e-mail from</p> <p>16 myself to Vince Rinaudo, who was the national</p> <p>17 account director for Wal-Mart.</p> <p>18 Q And the date on this e-mail is</p> <p>19 what?</p> <p>20 A Friday, September 18th, 1998.</p> <p>21 Q All right. And this is an</p> <p>22 e-mail you wrote in response to an e-mail</p> <p>23 that appears below it, correct?</p> <p style="text-align: right;">Page 211</p>	<p>1 Q Okay. I want to refer you back</p> <p>2 to what's been marked as Exhibit 7 in this</p> <p>3 deposition.</p> <p>4 A Okay.</p> <p>5 Q And ask you if looking at that</p> <p>6 exhibit helps refresh your recollection about</p> <p>7 the WAC issue?</p> <p>8 A Okay. Yes, ma'am.</p> <p>9 Q All right. Would you tell us</p> <p>10 what happened here?</p> <p>11 A Yes, ma'am. This -- it appears</p> <p>12 they're both related to the Rugby</p> <p>13 acquisition. And in the case where WAC</p> <p>14 prices and AWPs had not been adjusted for</p> <p>15 over two to three years on our acquisition of</p> <p>16 Rugby, we reviewed the whole product line,</p> <p>17 the whole pricing policies of Rugby as well</p> <p>18 as Watson to formulate one pricing policy in</p> <p>19 the integration. So therefore, we put</p> <p>20 together a list of products that we adjusted</p> <p>21 the WACs, and those WACs, if you'll note on</p> <p>22 the back of Exhibit 7, all of the</p> <p>23 spreadsheets will show probably 350 to 400</p> <p style="text-align: right;">Page 213</p>

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<p>1 WAC declines that Watson made on the Watson 2 and the Rugby product lines. Those were to 3 make adjustments to the market conditions 4 that were out there, thus lowering the impact 5 of the -- of the reimbursement. I mean, it 6 lowered the cost to the states or to any 7 third-party manufacturer -- or third-party 8 payer. But what the memo to Watson and to 9 Rite Aid refers to is that there was a belief 10 in the timing of when we did the price 11 decreases in August of 1998, along with the 12 time when HCFA reports their changes in 13 Federal Upper Limits and MACs.</p> <p>14 There was a code -- it ended up 15 being where the two coincided. And there was 16 an accusation made on me and on Watson of 17 affecting reimbursement at retail pharmacy 18 level based on our changes of the products 19 and the WACs of the Rugby and the Watson 20 line.</p> <p>21 Q So could you explain to us how 22 it is that your lowering your prices costs 23 them what they described as a significant</p> <p>Page 214</p>	<p>1 reduce the cost to the end user, whether it's 2 third-party payer, the state Medicaid's, 3 and/or a cash-paying customer.</p> <p>4 Q And just so that -- I don't 5 remember all of your prior testimony. But 6 can you tell us, again, you talked about the 7 timing issue between the lowering of the 8 HCFA, MAC, or FUL --</p> <p>9 A Yes.</p> <p>10 Q -- and your adjusting of these 11 WACs --</p> <p>12 A Yes, ma'am.</p> <p>13 Q -- and wasn't that connection 14 made because in fact the FUL is based upon 15 the lowest published wholesale cost?</p> <p>16 MR. MATTHEWS: Objection.</p> <p>17 Q Is that true or not?</p> <p>18 A Again, my understanding --</p> <p>19 MR. MATTHEWS: Objection.</p> <p>20 THE WITNESS: Excuse me.</p> <p>21 A Again, my understanding of the 22 way the FUL is determined is based on several 23 criterion; and one of them being that it is</p> <p>Page 216</p>
<p>1 amount of money?</p> <p>2 A Well, again, ma'am, in the memo 3 from Wal-Mart and from Rite Aid initially, 4 what they felt was a cost -- of our lowering 5 the price to be a cost to them on money is -- 6 obviously each state reimburses differently, 7 but the -- some off of WAC as you mentioned; 8 and some off of AWP. For those that 9 reimburse off of WAC, then lowering of the 10 WACs would lower the reimbursement that would 11 go to the individual retailer. In this case, 12 because of them accusing us, it was really a 13 timing issue. Watson lowered all of them to 14 remain market competitive. On some products 15 our WACs were so high and our contract prices 16 were so low that because of the cash terms, 17 the 2 discount for paying on time with the 18 WACs, high at the wholesalers, that discount 19 was greater than what the contract price was 20 for the product. So we did it to adjust to 21 make sure that we weren't losing 22 profitability. We also did it to then bring 23 those in line so that it would continue to</p> <p>Page 215</p>	<p>1 based on the lowest published cost out there.</p> <p>2 Q Well, and isn't that --</p> <p>3 A Plus a percentage.</p> <p>4 Q But isn't that why you assured 5 your customers that you couldn't have been 6 the reason the FUL was lowered, because you 7 did not at that time publish a Wholesale 8 Acquisition Cost?</p> <p>9 A Ma'am, we did not publish a 10 Wholesale Acquisition Cost. Rugby may have 11 before. The timing -- and the reason the 12 document was put together and the spreadsheet 13 was put together is we were being accused of 14 decreasing the profitabilities at the retail 15 level.</p> <p>16 Q Sure.</p> <p>17 A I contacted HCFA directly and 18 talked with the people at HCFA, product by 19 product, and went through whose product it 20 was that was determined the Federal Upper 21 Limits and the changes in the MAC. As a 22 service and as a -- to present a program back 23 to them that says, Look, we were accused at a</p> <p>Page 217</p>

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<p>1 or WAC. We cannot tell them what to sell it 2 at. If they wanted to sell it at a penny 3 over WAC, they could. We are suggesting what 4 we felt like was a competitive price in 5 giving them an SWP. 6 The third-party database 7 companies had to determine by averaging what 8 the surveys of the wholesalers were to come 9 up with an average of what was -- those 10 wholesalers might sell out to their 11 customers. 12 Q But what I'm asking you though, 13 is after the date of this exhibit, 14 August 24th, 2000, Watson began reporting an 15 SWP instead of an AWP; and that's the only 16 difference, correct? 17 MR. MATTHEWS: Objection. 18 A The terminology was changed 19 from AWP to SWP on the documents. 20 Q Was the methodology of 21 establishing the AWP or SWP changed? 22 A No, ma'am. 23 MS. MOORE: Thank you. You</p> <p style="text-align: right;">Page 290</p>	<p>1 launch grid for Buspirone. 2 Q. So the second page of this is 3 another one of the launch pricing grids that 4 we've discussed before for other products, 5 correct? 6 A. Yes -- 7 MR. MATTHEWS: Objection. 8 A. -- ma'am. Sorry. Yes. 9 Q. And who is Dr. Chao? 10 A. Dr. Chao is the founder and 11 chairman of Watson Laboratories. 12 Q. Why were you sending this 13 information to him? 14 A. Probably because, at that point 15 in time, I was reporting direct into him. 16 There was -- Fred Wilkinson had left, and I 17 was reporting straight in to Dr. Chao. 18 Q. All right. And I recall now 19 that you testified to that way back earlier 20 today. 21 A. Yes. 22 Q. All right. Looking at page two 23 of this document, in the column of this</p> <p style="text-align: right;">Page 292</p>
<p>1 want to just change the 2 tape? 3 THE VIDEOGRAPHER: This is the 4 end of Tape Five. We're 5 going off the Record at 6 5:33 p.m. 7 (Whereupon a brief recess was 8 taken.) 9 THE VIDEOGRAPHER: This is Tape 10 Six of the video deposition 11 of Mark Hartman. We're 12 going back on the Record at 13 5:28 p.m. 14 BY MS. MOORE: 15 Q. Okay. Mr. Hartman, I have 16 handed you a document marked Exhibit 44. Do 17 you recognize that document? 18 (Whereupon Plaintiff's Exhibit 19 No. 44 was marked for 20 identification and is attached 21 hereto.) 22 A. Again, it appears to be an 23 e-mail from myself to Dr. Chao regarding a</p> <p style="text-align: right;">Page 291</p>	<p>1 spreadsheet that is labeled I -- 2 A. Yes, ma'am. 3 Q. -- do you see some descriptions 4 added to this launching, pricing grid? 5 A. Yes, ma'am. 6 Q. And what is next to Level D? 7 A. It says warehousing chain, 8 ma'am. 9 Q. Okay. Thank you. 10 MS. MOORE: I'm going to pass 11 the Witness at this time to 12 New York and to you. 13 Here's what my preference 14 is: We have, as you know, 15 have a large volume of 16 production. We've gone 17 through as much as we can. 18 I'm hoping that this is all 19 the questions I will need 20 to ask of Mr. Hartman. I 21 will reserve the rest of 22 our time in case I find 23 additional documents in</p> <p style="text-align: right;">Page 293</p>

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<p>1 that review that</p> <p>2 necessitate questioning</p> <p>3 him. But for now, I'm</p> <p>4 passing the Witness.</p> <p>5 MR. MATTHEWS: Okay. And just</p> <p>6 to clarify for the -- at</p> <p>7 the time -- for now, based</p> <p>8 on what you have had the</p> <p>9 opportunity to review to</p> <p>10 date, you are satisfied</p> <p>11 that you have had enough</p> <p>12 time to take the deposition</p> <p>13 of Mr. Hartman today?</p> <p>14 MS. MOORE: Today. But I --</p> <p>15 MR. MATTHEWS: You'll only have</p> <p>16 additional questions if you</p> <p>17 come across additional</p> <p>18 documents that you haven't</p> <p>19 seen to date? Is that</p> <p>20 your --</p> <p>21 MS. MOORE: Yes. Because we</p> <p>22 have not completed our</p> <p>23 review of that entire</p> <p style="text-align: right;">Page 294</p>	<p>1 Record.</p> <p>2 BY MR. CARROLL:</p> <p>3 Q. Mr. Hartman, hi. My name is</p> <p>4 James Carroll. I'm with Kirby McInerney.</p> <p>5 And I represent the City of New York and New</p> <p>6 York counties as well as the State of Iowa in</p> <p>7 parallel litigation that the other counsel</p> <p>8 has questioned you about today. And I just</p> <p>9 have a few follow-up questions.</p> <p>10 Earlier, you testified that you</p> <p>11 are aware that the Federal Upper Limit is set</p> <p>12 based on published prices. Do you recall</p> <p>13 that testimony?</p> <p>14 MR. MATTHEWS: Objection.</p> <p>15 A. Yes.</p> <p>16 Q. And I believe you testified</p> <p>17 that you had spoken to someone at HCFA</p> <p>18 concerning -- concerning the Federal Upper</p> <p>19 Limit. Do you recall that testimony?</p> <p>20 A. I recall testifying that I</p> <p>21 spoke to someone at HCFA centered around the</p> <p>22 changes in the WAC pricing structure that we</p> <p>23 did when we integrated the Rugby product line</p> <p style="text-align: right;">Page 296</p>
<p>1 database. And I wanted</p> <p>2 to -- because of your</p> <p>3 cross-notice, I frankly</p> <p>4 just wanted to participate</p> <p>5 to the extent that I could.</p> <p>6 And if I've completed it,</p> <p>7 great. And if I haven't,</p> <p>8 we'll let you know.</p> <p>9 MR. MATTHEWS: All right. I</p> <p>10 understand your position.</p> <p>11 Mr. Carroll, you're</p> <p>12 up next.</p> <p>13 MR. CARROLL: Yes. Okay. Is</p> <p>14 there an echo? Because</p> <p>15 when I speak, I hear an</p> <p>16 echo.</p> <p>17 MS. MOORE: Not here.</p> <p>18 MR. MATTHEWS: Not here.</p> <p>19 MR. CARROLL: Okay. That's</p> <p>20 fine. I can hear myself</p> <p>21 anyway. Are we on the</p> <p>22 Record?</p> <p>23 COURT REPORTER: We are on the</p> <p style="text-align: right;">Page 295</p>	<p>1 into Watson's product line and whether our</p> <p>2 changes had an impact or a cause and effect</p> <p>3 of their published August -- I believe it was</p> <p>4 2000 -- no, August 1998 publication of</p> <p>5 changes to their Federal Upper Limits.</p> <p>6 Q. Right, correct. And during</p> <p>7 that testimony, I believe you testified that</p> <p>8 Watson could not affect the Federal Upper</p> <p>9 Limit because they did not publish WACs; is</p> <p>10 that correct?</p> <p>11 MR. MATTHEWS: Objection.</p> <p>12 A. That is correct.</p> <p>13 Q. They did not -- let me strike</p> <p>14 that.</p> <p>15 They could not impact the</p> <p>16 Federal Upper Limit because they did not</p> <p>17 provide WACs that were published; is that</p> <p>18 correct?</p> <p>19 MR. MATTHEWS: Objection.</p> <p>20 A. We did not publish WACs. And</p> <p>21 that was a statement from the HCFA folks to</p> <p>22 me that they had no access to our WACs. So</p> <p>23 therefore, there was no way that our WACs</p> <p style="text-align: right;">Page 297</p>

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<p>1 change the focus right now for a moment and</p> <p>2 ask you about pricing: You are familiar with</p> <p>3 the phrase "Average Wholesale Price," or</p> <p>4 "AWP," from your years of experience in the</p> <p>5 industry, right?</p> <p>6 A. Yes, sir.</p> <p>7 Q. In all the years that you have</p> <p>8 worked in the industry, what is your</p> <p>9 understanding of what a manufacturer's</p> <p>10 reported Average Wholesale Price is intended</p> <p>11 to represent?</p> <p>12 A. It's intended to represent a</p> <p>13 suggested retail price that the wholesaler</p> <p>14 would then sell out to retail or could sell</p> <p>15 out to retail. We, you know, could not tell</p> <p>16 and cannot direct because antitrust issues</p> <p>17 of -- tell them what to sell our products</p> <p>18 for. So we had a list price, and we had an</p> <p>19 AWP or SWP, which were interchangeable, that</p> <p>20 we provided to them.</p> <p>21 Q. And during the entire time that</p> <p>22 you worked for Watson, was that your</p> <p>23 understanding of what Watson intended the</p> <p style="text-align: right;">Page 338</p>	<p>1 Watson's understanding of definitions of AWP</p> <p>2 and WAC kept a secret from the industry?</p> <p>3 A. Definitions, no, sir.</p> <p>4 Q. Okay. And, in fact, have you</p> <p>5 ever heard of anyone in the industry, other</p> <p>6 than the Plaintiffs in this action, who</p> <p>7 believe that AWP and WAC represented averages</p> <p>8 of actual transaction prices?</p> <p>9 A. No, sir.</p> <p>10 Q. In fact, if Watson -- at some</p> <p>11 point in time, did Watson change how it</p> <p>12 reported AWP's to First DataBank?</p> <p>13 A. Yes. I believe we reviewed</p> <p>14 some documents today that showed -- I think</p> <p>15 it was in 2000 when we changed from producing</p> <p>16 documents that had AWP on it to changing them</p> <p>17 to SWP with a clarification to show that</p> <p>18 that's what, you know, again, we intended all</p> <p>19 along that it is in reality a suggested</p> <p>20 price. And it was up to the third-party</p> <p>21 database companies to report the AWP, to</p> <p>22 contact the wholesalers to determine what was</p> <p>23 our, again, suggested price provided to the</p> <p style="text-align: right;">Page 340</p>
<p>1 Average Wholesale Price it established and</p> <p>2 published to third parties to represent?</p> <p>3 A. Yes.</p> <p>4 Q. Let me ask you about WAC, or</p> <p>5 Wholesale Acquisition Cost. You're familiar</p> <p>6 with that phrase, right?</p> <p>7 A. Yes. Yes, sir.</p> <p>8 Q. And during the entire time that</p> <p>9 you have been employed in the pharmaceutical</p> <p>10 industry, do you have an understanding of</p> <p>11 what manufacturers mean to represent when</p> <p>12 they establish a Wholesale Acquisition Cost?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And what's that understanding?</p> <p>15 A. The Wholesale Acquisition Cost</p> <p>16 is the actual list price or invoice price</p> <p>17 that the wholesaler is billed at or invoiced</p> <p>18 at when we ship product to them.</p> <p>19 Q. Okay. And that was true for</p> <p>20 Watson during the entire time that you were</p> <p>21 employed by Watson, correct?</p> <p>22 A. That is correct.</p> <p>23 Q. Now, was your understanding and</p> <p style="text-align: right;">Page 339</p>	<p>1 wholesalers as a sale price. And they would</p> <p>2 then average those to come up with an AWP.</p> <p>3 Q. And that was in August of 2000,</p> <p>4 right?</p> <p>5 A. I believe so, yes, sir.</p> <p>6 Q. And at that -- before that</p> <p>7 time, had Watson reported WACs to third-party</p> <p>8 publishers?</p> <p>9 A. No.</p> <p>10 Q. And so did Watson at that</p> <p>11 time make a decision to begin reporting</p> <p>12 WACs for the first time to third-party</p> <p>13 publishers?</p> <p>14 A. We made a decision, as I</p> <p>15 recall, to report SWPs. The WAC reporting --</p> <p>16 I'm sorry. I'm blanking right now. I think</p> <p>17 that we did not produce WACs.</p> <p>18 Q. Let me show you a document, if</p> <p>19 I can find it here, and see if it refreshes</p> <p>20 your recollection on that.</p> <p>21 A. There were changes from AWP to</p> <p>22 SWP.</p> <p>23 Q. Let me show you what was</p> <p style="text-align: right;">Page 341</p>

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# REPLY EXHIBIT B

# **Condensed Transcript**

## **Deposition of Andrew Boyer**

**taken on  
May 4 - 5, 2009**

**ALABAMA MEDICAID PHARMACEUTICAL  
AVERAGE WHOLESALE PRICE LITIGATION  
Master Docket No. 2005-219**

**This Document Relates to:**

**State of Alabama v. Watson Laboratories, Inc.  
Case No. 2005-219.74**

**State of Alabama v. Watson Pharma, Inc.  
Case No. 2005-219.75**

**State of Alabama v. Watson Pharmaceuticals, Inc.  
Case No. 2005-219.76**



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Andrew Boyer  
May 4, 2009

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\* \* \* \* \*

The videotaped deposition of ANDREW BOYER, VOLUME I, was taken before Cornelia J. Baker, Certified Court Reporter, ABCR 290, and Certified Shorthand Reporter, as Commissioner, on Monday, May 4, 2009, commencing at approximately 1:41 p.m., in the law offices of Alston & Bird, 90 Park Avenue, New York, New York.

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IN THE CIRCUIT COURT OF  
MONTGOMERY COUNTY  
STATE OF ALABAMA

In the Matter of:

ALABAMA MEDICAID

PHARMACEUTICAL AVERAGE                      MASTER DOCKET  
WHOLESALE PRICE LITIGATION              NO. CV-2005-219

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This Document Relates to:

State of Alabama v.

Watson Laboratories, Inc.

No. 2005-219.74

State of Alabama v.

Watson Pharma, Inc.

No. 2005-219.75

State of Alabama v.

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No. 2005-219.76

Andrew Boyer  
May 4, 2009

1	* * * * *	1	* * * * *
2	IN THE CIRCUIT COURT OF THE FIRST CIRCUIT	2	STATE OF SOUTH CAROLINA
3	STATE OF HAWAII	3	COUNTY OF RICHLAND
4	State of Hawaii	4	IN THE COURT OF COMMON PLEAS
5	v.	5	FOR THE FIFTH JUDICIAL CIRCUIT
6	Abbott Laboratories, Inc., et al.	6	Master Case No. 2006-CP-40-4394
7	Civil No. 06-1-0720-04-EEH	7	The Honorable J. Cordell Maddox, Jr.
8		8	In Re: South Carolina Pharmaceutical
9	State of Hawaii	9	Pricing Litigation
10	v.	10	The document relates to:
11	Schering Corporation; DOE	11	Watson Pharma, Inc., and
12	Corporations 1-100; DOE	12	Watson Pharmaceuticals, Inc.
13	Entities 1-100	13	Civil Action No. 06-CP-40-7152
14	Civil No. 07-1-1639-09-EEH	14	Civil Action No. 06-CP-40-7155
15	* * * * *	15	* * * * *
16	STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY	16	IN THE SUPERIOR COURT FOR THE
17	Branch 9	17	STATE OF ALASKA
18	State of Wisconsin	18	THIRD JUDICIAL DISTRICT AT ANCHORAGE
19	v.	19	State of Alaska
20	AMGEN, Inc., et al.	20	v. Case No. 3AN-06-12026-CI
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22	* * * * *	22	Division, Inc., et al.
23		23	* * * * *
Page 2		Page 4	
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4	COUNTY DEPARTMENT, CHANCERY DIVISION	4	20TH CHANCERY COURT DIVISION
5	The People of the State of Illinois	5	State of Mississippi
6	v.	6	v. Civil Action No. G2009-65597
7	Abbott Laboratories, et al.	7	Watson Pharma, Inc.
8	No. 05-CH-2474	8	State of Mississippi
9	* * * * *	9	v. Civil Action No. G2009-65629
10	IN THE DISTRICT COURT OF THE FOURTH JUDICIAL	10	Watson Pharmaceuticals, Inc.
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12	THE COUNTY OF ADA	12	v. Civil Action No. G2009-65630
13	State of Idaho	13	Watson Laboratories, Inc.
14	v.	14	* * * * *
15	Alpharma USPD INC.; AstraZeneca	15	
16	Pharmaceuticals LP; AstraZeneca LP	16	
17	Case No. CV0C07-01847	17	
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19	TRAVIS COUNTY, TEXAS	19	
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23	Ven-A-Care of the Florida Keys, Inc.,	23	
	v.		
	Alpharma USPD f/k/a		
	Barre-National, Inc., et al.		
	* * * * *		
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<p>1 third-party compendias like First DataBank.</p> <p>2 Q. And Schein and Watson</p> <p>3 calculated and provided AWP's to First</p> <p>4 DataBank with the knowledge that First</p> <p>5 DataBank would, in turn, publish an AWP for</p> <p>6 the Schein and Watson drugs, correct?</p> <p>7 A. Would publish a number that</p> <p>8 they called AWP, yes.</p> <p>9 Q. And Schein and Watson knew that</p> <p>10 third-party payers, such as State Medicaid</p> <p>11 agencies, would utilize that published AWP</p> <p>12 when reimbursing providers, correct?</p> <p>13 MR. MATTHEWS: Objection.</p> <p>14 A. Third-party providers pulled</p> <p>15 data from First DataBank and make decisions</p> <p>16 on what they choose to do as it relates to</p> <p>17 reimbursement, maybe AWP or SWP or WAC, or</p> <p>18 some other utilization of that data, or other</p> <p>19 data that they have access to, and will</p> <p>20 determine reimbursement based upon that.</p> <p>21 Q. And I get that. I'm trying to</p> <p>22 focus on AWP between 1991 and 2002, and what</p> <p>23 Watson and Schein did and what Watson and</p> <p style="text-align: right;">Page 42</p>	<p>1 number they choose to determine</p> <p>2 reimbursement.</p> <p>3 Q. All right. If a State Medicaid</p> <p>4 agency had in its formula AWP as a factor,</p> <p>5 then Watson was well aware that the published</p> <p>6 AWP would be utilized by State Medicaid</p> <p>7 agencies in reimbursement, correct?</p> <p>8 A. I don't think that Watson was</p> <p>9 looking at what a state was doing with the</p> <p>10 AWP to determine reimbursement. It could</p> <p>11 have been utilized. Was it utilized to some</p> <p>12 extent by which states, it absolutely could</p> <p>13 have been utilized.</p> <p>14 Q. And Watson knew that it was, in</p> <p>15 fact -- and I'm not trying to pin you down to</p> <p>16 exact states, but Watson knew without</p> <p>17 question that some states had AWP in their</p> <p>18 formulas, and some states were relying on</p> <p>19 that AWP when they reimbursed providers,</p> <p>20 correct?</p> <p>21 MR. MATTHEWS: Objection.</p> <p>22 A. I would say Watson knew that a</p> <p>23 third party, whether it be a state or some</p> <p style="text-align: right;">Page 44</p>
<p>1 Schein knew, okay?</p> <p>2 A. I'm trying my best to help you</p> <p>3 out.</p> <p>4 Q. All right. So between -- and</p> <p>5 let me ask you if we can do this for the</p> <p>6 purposes of this question: Can I ask you</p> <p>7 about Watson and include Schein?</p> <p>8 A. Sure.</p> <p>9 Q. Okay. So here's my question:</p> <p>10 Between 1991 and 2002, Watson calculated AWP's</p> <p>11 and reported those AWP's to First DataBank</p> <p>12 with the knowledge that First DataBank would</p> <p>13 publish those AWP's, correct?</p> <p>14 A. First DataBank would publish a</p> <p>15 number called AWP based upon data they</p> <p>16 received from Watson.</p> <p>17 Q. Right. And Watson knew that</p> <p>18 State Medicaid agencies, not all, but at</p> <p>19 least some, would utilize that published AWP</p> <p>20 when reimbursing providers, correct?</p> <p>21 MR. MATTHEWS: Objection.</p> <p>22 A. I would say that some would use</p> <p>23 SWP or AWP or whatever algorithm or other</p> <p style="text-align: right;">Page 43</p>	<p>1 other third-party organization, may be using</p> <p>2 AWP to determine their reimbursement, along</p> <p>3 with whatever calculation they were using</p> <p>4 from that.</p> <p>5 Q. AWP stands for Average</p> <p>6 Wholesale Price, correct?</p> <p>7 MR. MATTHEWS: Objection.</p> <p>8 A. I guess. It depends who's</p> <p>9 talking about it, how they're utilizing it.</p> <p>10 Q. Well, AWP literally stands for</p> <p>11 Average Wholesale Price, correct?</p> <p>12 MR. MATTHEWS: Objection.</p> <p>13 A. To who?</p> <p>14 Q. To everybody.</p> <p>15 A. Who's everybody?</p> <p>16 Q. Well, if Average Wholesale</p> <p>17 Price doesn't stand -- let me start over.</p> <p>18 If AWP is not an acronym for</p> <p>19 Average Wholesale Price, what is it an</p> <p>20 acronym for?</p> <p>21 MR. MATTHEWS: Objection.</p> <p>22 A. I've said to you that the</p> <p>23 acronym that we used AWP for was Average</p> <p style="text-align: right;">Page 45</p>

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<p>1 A. I think the intent of this was 2 to market it competitively with Mylan in the 3 marketplace. 4 Q. Well, we'll move along then. 5 Let's talk about a different subject. 6 Would you agree that AWP is not 7 a price that is regularly paid by retail 8 pharmacists to purchase Watson's drugs? 9 A. At what point in time? 10 Q. Any point in time. 11 A. Today, I wouldn't believe that 12 anybody is purchasing product for AWP -- but 13 I'm guessing -- or paying it at retail. I 14 can't tell you back eighteen, nineteen years 15 ago how much the markup above the contract or 16 WAC or price would have been. 17 Q. Can you point to a single 18 example for this Jury of a single retail 19 pharmacist that ever paid the AWP that was 20 calculated by either Schein or Watson? 21 A. I would have no way of knowing 22 that. 23 Q. So the answer is no, you</p> <p style="text-align: right;">Page 266</p>	<p>1 contracts, the wholesalers 2 were. 3 A. We are selling to direct 4 customers, being chains, wholesalers, mail 5 order. What they chose after that to sell 6 the product for, a wholesale distributor 7 marketplace, I don't have any control over. 8 I don't know what price that would be. 9 Q. Well, chain -- 10 A. There is a markup, I just don't 11 know what it is. 12 Q. Chain drugstores, Mr. Boyer -- 13 A. Yes. 14 Q. -- they are retail pharmacies, 15 correct? 16 A. That is correct. 17 Q. Watson and Schein both sell 18 directly to those retail pharmacies, correct? 19 A. That is correct. 20 Q. Those retail pharmacies include 21 the major chains, such as Rite Aid, 22 Walgreens, Walmart, correct? 23 A. That is correct.</p> <p style="text-align: right;">Page 268</p>
<p>1 cannot, correct? 2 A. I'm telling you that I've had 3 no way of knowing what they paid at retail 4 unless they purchased it directly from 5 Watson. 6 Q. Well, that -- with all due 7 respect, Mr. Boyer -- 8 A. Yes. 9 Q. -- you, in fact, have about 90 10 percent of your business through contracts, 11 direct contracts with customers, correct? 12 A. That's today, yes. 13 Q. And that goes back for some 14 time, at least to 1996, correct? 15 A. That's correct -- to '96? I 16 don't know about '96, but, you know, it goes 17 back. 18 Q. With those direct customers, 19 you knew exactly what price Schein was 20 charging them, or Watson, correct? 21 MR. FARQUHAR: Objection. 22 Schein and Watson weren't 23 charging the prices to the</p> <p style="text-align: right;">Page 267</p>	<p>1 Q. In those instances, Watson and 2 Schein knew exactly what those retail 3 pharmacies were paying for their drugs, 4 correct? 5 A. That would be correct. 6 Q. Let's limit my question to 7 those types of retail customers. Are you 8 with me? 9 A. Absolutely. 10 Q. Can you point this Jury to a 11 single one of those customers that ever paid 12 AWP for a single Schein or Watson drug? 13 A. No, I cannot. 14 Q. Let's move on to the next 15 topic. 16 Are you aware that there is a 17 certain window of time when a brand name drug 18 goes off patent and generic manufacturers 19 come into the marketplace that there is no 20 Federal Upper Limit or Maximum Allowable Cost 21 in place? 22 A. It's not something that I'm 23 aware of. Not something that I would</p> <p style="text-align: right;">Page 269</p>

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<p>1 page of the Exhibit 20 marked 23733, and 2 you'll note that there it provides, quote, 3 Where appropriate, manufacturers reported 4 prices should accurately take into account 5 price reductions, cash discounts, free goods 6 contingent on a purchase agreement, rebates, 7 upfront payments, coupons, goods in kind, 8 free or reduced price services, grants or 9 other price concessions, or similar benefits 10 offered to some or all purchasers.</p> <p>11 Mr. Boyer, my question for you 12 is: In Watson's view, would it be 13 appropriate for Watson to report to 14 third-party publishers an AWP that took into 15 account all of those price concessions 16 described in that paragraph?</p> <p>17 A. No. 18 Q. Why not? 19 A. It's not possible. We don't 20 have any discounts or rebates off of SWP, so 21 it would be impossible to calculate that. 22 Q. If you provided an AWP that 23 took into account all of those numbers while</p> <p style="text-align: right;">Page 342</p>	<p>1 questions I'd like to ask about that. To 2 orient the Jury, please, could you just tell 3 the Jury what Exhibit 22 is?</p> <p>4 A. It is a letter from Mark 5 Hartman to Jerry Prentice of Rite Aid, the 6 Director of Brand Pharmaceutical Purchasing 7 and Marketing.</p> <p>8 Q. Okay. Rite Aid is not a 9 wholesaler, is it?</p> <p>10 A. No. Rite Aid is a retail 11 chain.</p> <p>12 Q. Do you know how many states 13 Rite Aid operates in?</p> <p>14 A. Probably two-thirds of the 15 United States.</p> <p>16 Q. Do you know whether it would be 17 possible for Watson to know all of the 18 different reimbursement formulas that 19 insurance companies may use to calculate 20 reimbursements that they pay to Rite Aid for 21 dispensing Watson's products?</p> <p>22 A. Absolutely not. 23 Q. Do you have any idea how many</p> <p style="text-align: right;">Page 344</p>
<p>1 at the same time maintaining the AWP that you 2 currently report, would it be appropriate to 3 report that different price?</p> <p>4 A. It would be inaccurate. 5 Q. Mr. Boyer, from Watson's 6 perspective, would it be appropriate for 7 Watson to report a Wholesale Acquisition Cost 8 which took into account all of the price 9 concessions which are referred to in that 10 paragraph?</p> <p>11 A. No. The Wholesale Acquisition 12 Cost is just that. It's not a contracted 13 price with all of those deductions from it. 14 That would be a direct or an indirect 15 contract price.</p> <p>16 Q. So, in fact, from Watson's 17 perspective, if it reported a WAC which 18 included all of those price concessions, 19 Watson would be lying, wouldn't it?</p> <p>20 A. It would be inaccurate. 21 Q. Mr. Boyer, I'd like to show you 22 what was marked yesterday as Exhibit 22 to 23 your deposition. And there are a few</p> <p style="text-align: right;">Page 343</p>	<p>1 different reimbursement formulas may be used 2 by third-party payers who reimburse Rite Aid 3 for dispensing products manufactured by 4 Watson?</p> <p>5 A. It's got to be hundreds for all 6 the different programs.</p> <p>7 Q. Does Watson have any way to 8 know what the spread will be between the 9 price Rite Aid pays for a particular product 10 from Watson and the amount that it may be 11 reimbursed when it dispenses that product at 12 one of its outlets in one of the states in 13 the United States of America?</p> <p>14 A. No. 15 Q. Mr. Boyer, I'd like to show you 16 what was marked yesterday at your deposition 17 as Exhibit 23 and ask you a couple of 18 questions about that. And again, so the Jury 19 is oriented, could you tell the Jury what 20 Exhibit 23 is?</p> <p>21 A. It's a memo on Cimetidine 22 tablets from Chris Vales to Schein's sales 23 representatives.</p> <p style="text-align: right;">Page 345</p>

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<p>1 <b>Watson drugs, correct?</b></p> <p>2 MR. MATTHEWS: Objection.</p> <p>3 A. The entity being who?</p> <p>4 <b>Q. Whoever the provider purchased</b></p> <p>5 <b>the Watson drugs from.</b></p> <p>6 MR. MATTHEWS: Objection.</p> <p>7 A. CVS purchases product directly</p> <p>8 from Watson.</p> <p>9 <b>Q. Okay. Let me start over.</b></p> <p>10 <b>Let's do it that way.</b></p> <p>11 A. So I can understand it.</p> <p>12 Thanks.</p> <p>13 <b>Q. Medicaid reimburses CVS for</b></p> <p>14 <b>Watson products, correct?</b></p> <p>15 A. That would be correct.</p> <p>16 <b>Q. CVS, in turn, pays Watson for</b></p> <p>17 <b>Watson products, correct?</b></p> <p>18 MR. MATTHEWS: Objection.</p> <p>19 A. That is correct.</p> <p>20 <b>Q. So in that sense, Medicaid</b></p> <p>21 <b>reimbursement dollars flow through CVS back</b></p> <p>22 <b>to Watson, correct?</b></p> <p>23 MR. MATTHEWS: Objection.</p> <p style="text-align: right;">Page 438</p>	<p>1 you could look at, you know, I'm sure, Aetna</p> <p>2 or CIGNA or anybody else, if we have the</p> <p>3 data, is what percentage of our business is</p> <p>4 different -- you know, different third party,</p> <p>5 although I don't know we have access to all</p> <p>6 that third party.</p> <p>7 <b>Q. Well, I'm not interested in</b></p> <p>8 <b>insurance companies.</b></p> <p>9 A. Okay.</p> <p>10 <b>Q. I'm just talking about just</b></p> <p>11 <b>state Medicaid dollars.</b></p> <p>12 A. Okay.</p> <p>13 <b>Q. Nine to 11 percent of Watson's</b></p> <p>14 <b>annual business comes from state Medicaid</b></p> <p>15 <b>reimbursement dollars, correct?</b></p> <p>16 A. Okay.</p> <p>17 <b>Q. Is that correct?</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. And certainly Watson is not</b></p> <p>20 <b>willing or interested in giving up that 9 to</b></p> <p>21 <b>11-percent Medicaid dollars a year, correct?</b></p> <p>22 MR. MATTHEWS: Objection.</p> <p>23 A. I think, as I said before, that</p> <p style="text-align: right;">Page 440</p>
<p>1 A. No. We don't do any business</p> <p>2 with Medicaid per se. We pay -- we do</p> <p>3 business with CVS.</p> <p>4 <b>Q. Right. Who, in turn, does</b></p> <p>5 <b>business with state Medicaid agencies through</b></p> <p>6 <b>reimbursement, correct?</b></p> <p>7 A. The State pays CVS to provide a</p> <p>8 service. We pay CVS -- CVS pays us for</p> <p>9 products.</p> <p>10 <b>Q. And in that sense, State</b></p> <p>11 <b>Medicaid dollars flow through CVS to Watson,</b></p> <p>12 <b>correct?</b></p> <p>13 MR. MATTHEWS: Objection.</p> <p>14 A. I don't see it as flowing</p> <p>15 through to Watson. CVS's dollars flow to</p> <p>16 Watson.</p> <p>17 <b>Q. Okay. Well, where does the 9</b></p> <p>18 <b>to 11 percent come from? You've testified</b></p> <p>19 <b>that 9 to 11 percent of Watson's annual sales</b></p> <p>20 <b>are attributable to Medicaid reimbursement.</b></p> <p>21 <b>Where does that come from?</b></p> <p>22 A. Medicaid -- Medicaid business,</p> <p>23 if you look at it that way, much the same as</p> <p style="text-align: right;">Page 439</p>	<p>1 all of our business is important to us,</p> <p>2 including Medicaid.</p> <p>3 <b>Q. And you want all of the</b></p> <p>4 <b>business you can get, including state</b></p> <p>5 <b>Medicaid reimbursement dollars, correct?</b></p> <p>6 A. Well, we really can't control</p> <p>7 our Medicaid business, remember. We're</p> <p>8 selling to chains or we're selling to</p> <p>9 wholesalers, who are, in turn, selling to</p> <p>10 independents. Who they choose to dispense</p> <p>11 that product to is beyond our control. So</p> <p>12 when you say that the Medicaid business is</p> <p>13 important to us, it's important, but we don't</p> <p>14 control it. Who really controls that is the</p> <p>15 company that's actually dispensing the</p> <p>16 product at retail. So if we told you</p> <p>17 tomorrow we didn't want Medicaid business, it</p> <p>18 doesn't really help us, because CVS is the</p> <p>19 one that controls that decision of who</p> <p>20 they're dispensing product to.</p> <p>21 <b>Q. But just as a practical -- just</b></p> <p>22 <b>as your practical knowledge, you understand</b></p> <p>23 <b>that CVS is going to purchase Watson drugs</b></p> <p style="text-align: right;">Page 441</p>

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# REPLY EXHIBIT C

# **Condensed Transcript**

## **Deposition of Karlsson Kathleen**

**taken on  
May 5, 2009**

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AVERAGE WHOLESALE PRICE LITIGATION  
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**Certified Court Reporters,**



Karlsson Kathleen  
May 5, 2009

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\* \* \* \* \*

The videotaped deposition of KATHLEEN  
KARLSSON, was taken before Cornelia J.  
Baker, Certified Court Reporter, ABCR 290,  
and Certified Shorthand Reporter, as  
Commissioner, on Tuesday, May 5, 2009,  
commencing at approximately 11:56 a.m., in  
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Karlsson Kathleen  
May 5, 2009

<p>1 A. I don't believe that I have, 2 no. 3 Q. Read No. 9 for the Jury, 4 please, ma'am. 5 MRS. KOSKI: Objection. She's 6 already gone through all of 7 this, Clint. 8 Q. Can you read No. 9? 9 A. Percentage of Defendants' total 10 sales attributed to the Medicaid channel 11 between 1991 to 2005. 12 Q. And I believe there is 13 testimony that the total sales attributable 14 to Alabama Medicaid is between 9 and 15 11 percent, correct? 16 MRS. KOSKI: Objection. 17 A. Could you restate that 18 question, please? 19 Q. Well, let me just ask you: 20 What is the percentage of Watson's total 21 sales attributable to Alabama between 1991 22 and 2005? 23 A. I don't have the percentage for</p> <p style="text-align: right;">Page 190</p>	<p>1 A. It's not something that I've 2 done. 3 Q. Could you? 4 A. I could. 5 Q. You just chose not to do it in 6 preparation for this deposition, correct? 7 MRS. KOSKI: Objection. 8 Q. Is that right? 9 A. I did not think about doing it 10 or not doing it. It's not something we 11 track. 12 Q. If asked, you could track that, 13 couldn't you? 14 A. It would be an estimate. 15 Q. How would you do it? 16 A. Off the top of my head, I'm not 17 sure. I'd have to take a look at the usage 18 and see how we could back into sales. 19 Q. Does Watson have to communicate 20 its prices to state Medicaid programs in 21 order to participate in state Medicaid 22 programs? 23 MRS. KOSKI: Objection.</p> <p style="text-align: right;">Page 192</p>
<p>1 Alabama. 2 Q. What is the percentage 3 nationwide? 4 A. Nine to 11 percent. 5 Q. And do you know what that 9 to 6 11 percent would equal in a dollar amount? 7 MRS. KOSKI: Objection. 8 A. No, I do not. 9 Q. Why not? 10 MRS. KOSKI: Objection. 11 A. Because Medicaid does not 12 purchase products from us, therefore we don't 13 track it as sales. 14 Q. Well, how do you know that 9 to 15 11 percent of Medicaid reimbursements -- 16 strike that. 17 How do you know that 9 to 18 11 percent of Watson's total sales are 19 attributable to Medicaid? 20 A. We compared the units. 21 Q. Can't you assign dollar values 22 to those units? 23 MRS. KOSKI: Objection.</p> <p style="text-align: right;">Page 191</p>	<p>1 A. No, it does not. 2 Q. How would Watson participate in 3 state Medicaid programs without communicating 4 its prices to state Medicaid programs? 5 MRS. KOSKI: Objection. 6 A. Information is provided from 7 CMS. And I believe they provide the unit 8 rebate amounts to the state agencies. 9 Q. Right. But the other side of 10 that is that the state Medicaid agencies have 11 to reimburse for Watson's products, correct? 12 A. Yes. 13 Q. If Alabama didn't reimburse for 14 any of Watson's products, Watson would not 15 send a rebate to Alabama Medicaid, correct? 16 A. Correct. 17 Q. So how does the Alabama 18 Medicaid Agency obtain Watson's prices? 19 MRS. KOSKI: Objection. 20 A. We are not allowed to -- we are 21 not required to send the states actual 22 prices. 23 Q. Well, how does Alabama get the</p> <p style="text-align: right;">Page 193</p>

# REPLY EXHIBIT D

Clark, Napoleon D. - Vol. II CONFIDENTIAL  
Morristown, NJ

June 28, 2007

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
CIVIL ACTION NO. 03-CV-11865-PBS

-----X  
THE COMMONWEALTH OF )  
MASSACHUSETTS, ) VIDEOTAPED  
Plaintiff, ) DEPOSITION UPON  
v. ) ORAL EXAMINATION  
MYLAN LABORATORIES INC., et ) OF  
al., ) NAPOLEON D. CLARK  
Defendants. ) V O L U M E 2  
-----X

=====  
C O N F I D E N T I A L  
=====

T R A N S C R I P T of the stenographic notes of  
JANE LORFING COLWELL, a Certified Shorthand  
Reporter and Notary Public of the State of New  
Jersey, taken at the Madison Hotel, One Convent  
Road, Morristown, New Jersey, on Thursday, June  
28, 2007, commencing at 8:20 a.m.

Clark, Napoleon D. - Vol. II CONFIDENTIAL  
Morristown, NJ

June 28, 2007

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1 questions, there was one matter that I wanted to  
2 clarify from Mr. Clark's testimony yesterday, and  
3 Mr. Heidlage has kindly given me permission to  
4 proceed with that question now as opposed to  
5 waiting until the end of his questioning.

6 Mr. Clark, yesterday you were asked a  
7 question about whether customers of  
8 pharmaceutical products from Watson Pharma, Inc.,  
9 are reimbursed based on AWP, and you answered  
10 that question yes. First of all, do you have  
11 personal knowledge of how customers of Watson  
12 Pharmaceuticals are reimbursed for their drug  
13 products?

14 THE WITNESS: Personal in the sense of  
15 what process they go through to get reimbursed?

16 MR. FARQUHAR: Right.

17 THE WITNESS: No.

18 MR. FARQUHAR: And are all -- to your  
19 understanding, are all of your customers  
20 reimbursed based on AWP?

21 THE WITNESS: To my understanding, some  
22 are. AWP is one basis of reimbursement. There

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Morristown, NJ

June 28, 2007

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1 are also other categories that are used to  
2 reimburse customers, to my understanding.

3 MR. FARQUHAR: What kind of other  
4 standards are there?

5 THE WITNESS: We have customers --  
6 customers could be reimbursed through MAC  
7 pricing. I believe federal upper limit pricing  
8 and other pricing categories that may be set by  
9 their third-party payors.

10 MR. FARQUHAR: Thank you.

11 Thank you, Mr. Heidlage.

12 MR. HEIDLAGE: Thank you.

13  
14 N A P O L E O N D. C L A R K,  
15 360 Mount Kemble Avenue, Morristown, New Jersey  
16 07960, having been previously sworn, testifies as  
17 follows:  
18

19 CONTINUED DIRECT EXAMINATION

20 BY MR. HEIDLAGE:

21 Q. Good morning, Mr. Clark.

22 A. Good morning.

# REPLY EXHIBIT E





April 23, 1998

Susan Rhodus  
Vice President of Operations  
GeriMED  
9707 Shelbyville Road  
Louisville, Kentucky 40223

Dear Susan,

Attached is a proposed spreadsheet of rebates for Microzide based on market share. Please notice that the scale was based on the market share of HCTZ. It appears that it may not be profitable for your members to switch Maxzide and Dyazide patients until they reach a higher rebate level.

As we had discussed, there is an added benefit for all members to move to Microzide since the spread for Microzide is better than generic 25mg HCTZ.

*All figures are based on a 30 day supply.*

Microzide 12.5 mg HCTZ:

AWP for 30 day supply =	\$12.135
@ AWP less 10% =	10.92*
Cost of goods =	9.00**
Spread =	1.92 per 30 day supply

Generic 25mg HCTZ:

Generic AWP for 30 day supply =	\$5.16
HCFA MAC @ \$1.49/c =	0.447
Estimated cost of goods =	0.09
Spread =	0.357 per 30 day supply

\* Price supplied by GeriMed

\*\* Based on GeriMed contract price of \$29.97/c

With the current spread, Microzide is producing an additional \$1.56 per 30 day supply. With an increase in market share to just 15%, the spread increases to \$2.10 per 30 day supply.

Susan, the switch to a low dose of 12.5 mg HCTZ, like Microzide, can be supported by many studies as well as the JNC VI. The studies show that 12.5 mg HCTZ is comparable in efficacy to 25mg, with a side effect profile comparable to placebo. Often 25mg HCTZ is associated with changes in potassium, cholesterol, and uric acid.

The JNC VI has supported the use of diuretics as first line therapy because they have shown to reduce morbidity and mortality. Furthermore, it may be beneficial to add a second agent in cases where patients are not being controlled with monotherapy. HCTZ 12.5 mg, like Microzide, has shown to have synergistic effects with ACEs, beta blockers, and CCBs.

We are prepared to provide an updated formulary kit, studies, a copy of the JNC VI, as well as suggested letters for patient switches if needed, to the consultant pharmacists who will be converting the patients.

Susan, thank you again for the opportunity to present this market share program. I look forward to working with you in the future. Please let me know how the proposed program was received at the member meeting.

Sincerely,

Tom Hadley  
Microzide Product Manager

Microzide Market Share Conversion Scale

Usage 7/01/97 - 9/30/97	Current Extended Units	Current MKT Share
Total HCTZ	1,016,300	
Microzide	2,300	0.226% <i>Microzide cost per cap = \$0.30</i>
25mg	880,600	86.648% <i>MACed at \$1.49/C, \$14.90/M</i>
50mg	132,300	13.018%
100mg	800	0.08%

Market Share Goal of Total HCTZ Usage*	Extended Units	Current Cost\$	Discount Rate	Rebate	Adjusted Cost/Cap	Additional Gross Profit/Cap	Adjusted Spread/Cap	Adjusted Spread/30day Rx
1%	10,163	\$3,049	2%	\$60.98	0.294	\$0.052	\$0.058	\$1.74
3%	30,489	\$9,147	3%	\$274.40	0.291	\$0.052	\$0.061	\$1.83
5%	50,815	\$15,245	4%	\$609.78	0.288	\$0.052	\$0.064	\$1.92
10%	101,630	\$30,489	5%	\$1,524.45	0.285	\$0.052	\$0.067	\$2.01
15%	152,445	\$45,734	6%	\$2,744.01	0.282	\$0.052	\$0.070	\$2.10
20%	203,260	\$60,978	8%	\$4,878.24	0.276	\$0.052	\$0.076	\$2.28
25%+	254,075	\$76,223	10%	\$7,622.25	0.270	\$0.052	\$0.082	\$2.46

\* Although each member will individually enroll and payment will be only to those who perform, this illustration is based on the total HCTZ usage for GeriMed.

# REPLY EXHIBIT F



**WATSON**  
Laboratories, Inc.

A Subsidiary of Watson Pharmaceuticals, Inc.

December 2, 1997

Jerry Prentice  
Director of Brand Pharmaceutical  
Purchasing and Marketing  
Rite Aid Corporation  
30 Hunter Lane  
Camp Hill, PA 17011

Dear Jerry,

Attached please find a revised Oral Contraceptive Compound Management program. As discussed during our last meeting, the intention of the program is to provide Rite Aid Corporation the opportunity to earn increased profitability via lucrative spreads and incremental rebates on the entire family of Watson oral contraceptives.

Per your feedback, we have altered the sliding scale for the Market Share rebates to 5% increments, and doubled the maximum percentage Rite Aid may earn to 10%.

I hope the data provided helps us finalize our agreement on the oral contraceptive line. As a side note, I left the reimbursement percentage the same on Zovia because Demulen just announced a price increase for the brand. This will allow us to increase our AWP spread even higher than we had discussed. Their increase in price will hopefully allow you to increase both your retail sell prices on Demulen and Zovia.

I look forward to discussing the next steps with you. I am in all week, but will be out of town Monday – Thursday of next week.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Mark T. Hartman', followed by a horizontal line.

Mark T. Hartman  
Director of Marketing, Trade & Managed Care  
Watson Laboratories, Inc.

**PLAINTIFF'S  
EXHIBIT**  
Boyer No. 22  
WATSON 5/4/09



## Watson Laboratories Oral Contraceptive Proposal

December 2, 1997

### Rite Aid Corporation

Watson Laboratories proposes the following Performance Based Market Share Program for its Oral Contraceptive line.

**Objective:** To provide Rite Aid Corporation the opportunity to earn increased profitability through lucrative spreads and incremental rebates on the Watson family of oral contraceptives.

**Products included:**

- Zovia
- Necon / Genora
- Levora
- Nor-QD

**Pricing:**

Contract pricing for each product.

**Market Share Incentive:**

Watson Laboratories will pay a Market Share rebate to Rite Aid Corporation for movement of share from a baseline in the following percentages:

<u>Market Share Increase</u>	<u>Percent Rebate</u>
1-5%	1%
6-10%	2%
11-15%	3%
16-20%	4%
21-25%	5%
26-30%	6%
31-35%	7%
36-40%	8%
41-45%	9%
45-50%	10%

**Example:**

- If Zovia share is 25% as a baseline.

<u>Market Share Level</u>	<u>Rebate Percentage</u>
30%	1%
35%	2%
40%	3%
45%	4%
50%	5%
55%	6%
60%	7%
65%	8%
70%	9%
75%	10%

**Rite Aid - Compound Management Program vs Levlen & Nordette****Assumptions**

Units based on Cycles dispensed.

Units are annualized based on data provided by account.

**Levora Worksheet - Rite Aid**

<u>Pricing per Cycle</u>		<u>21</u>	<u>28</u>
Levora	\$	10.00	\$ 10.00
Nordette	\$	21.22	\$ 21.49
Levlen	\$	21.28	\$ 21.28

<u>Annualized Sales</u>				<u>Totals</u>
Levora	<u>21</u>	<u>28</u>		
Cycles Dispensed	4,200	195,000		199,200
Dollars	\$ 42,000	\$ 1,950,000		\$ 1,992,000
Nordette	<u>21</u>	<u>28</u>		
Cycles Dispensed	6,200	290,000		296,200
Dollars	\$ 131,564	\$ 6,232,100		\$ 6,363,664
Levlen	<u>21</u>	<u>28</u>		
Cycles Dispensed	2976	125640		128,616
Dollars	\$ 63,329	\$ 2,673,619		\$ 2,736,948
Total Market	<u>21</u>	<u>28</u>		
Cycles Dispensed	13376	610640		624,016
Dollars	\$ 236,893	\$ 10,855,719		\$ 11,092,612
Current Rite Aid Market Share	<u>21</u>	<u>28</u>		
Levora	31%	32%		32%
Nordette	46%	47%		47%
Levlen	22%	21%		21%

**Market Share Conversion Rebates - Annualized: Paid on Moving Share to Levora.**

<u>%Market Share Goals</u>	<u>% Gain Over Baseline</u>	<u>% Rebate</u>	<u>Rebate on Incr. Gain</u>
37%	5%	1%	\$ 3,120
42%	10%	2%	\$ 12,480
47%	15%	3%	\$ 28,081
52%	20%	4%	\$ 49,921
57%	25%	5%	\$ 78,002
62%	30%	6%	\$ 112,323
67%	35%	7%	\$ 152,884
72%	40%	8%	\$ 199,685
77%	45%	9%	\$ 252,726
82%	50%	10%	\$ 312,008

Redacted



# **Rite Aid - Compound Management Program vs Levlen & Nordette** **Gross Profit Analysis Worksheet**

## **Assumptions**

Units based on Cycles dispensed.

11/6/97

Units are annualized based on data provided by account.

## **Levora Worksheet - Rite Aid**

<u>Pricing per Cycle</u>	<u>21</u>	<u>28</u>
Levora	\$ 10.00	\$ 10.00
Nordette	\$ 21.22	\$ 21.49
Levlen	\$ 21.28	\$ 21.28

<u>Annualized Sales</u>			<u>Totals</u>
Levora	<u>21</u>	<u>28</u>	
Cycles Dispensed	4,200	195,000	199,200
Dollars	\$ 42,000	\$ 1,950,000	\$ 1,992,000
Nordette	<u>21</u>	<u>28</u>	
Cycles Dispensed	6,200	290,000	296,200
Dollars	\$ 131,564	\$ 6,232,100	\$ 6,363,664
Levlen	<u>21</u>	<u>28</u>	
Cycles Dispensed	2,976	125,640	128,616 12% of total market
Dollars	\$ 63,329	\$ 2,673,619	\$ 2,736,948
<u>Total Market</u>	<u>21</u>	<u>28</u>	
Cycles Dispensed	13,376	610,640	624,016
Dollars	\$ 236,893	\$ 10,855,719	\$ 11,092,612

<u>Current Rite Aid Market Share</u>		
	<u>21</u>	<u>28</u>
Levora	31%	32%
Nordette	46%	47%
Levlen	22%	21%

<u>Per Cycle AWP</u>	<u>21</u>	<u>28</u>
Levora	\$ 24.07	\$ 24.07
Nordette	\$ 26.53	\$ 26.86
Levlen	\$ 25.16	\$ 25.16

**Redacted**

<u>Current Reimbursement to Rite Aid</u>	<u>21</u>	<u>28</u>	<u>Totals</u>
Levora	\$ 97,946	\$ 4,547,507	\$ 4,645,454
Nordette	\$ 157,780	\$ 7,462,831	\$ 7,620,611
Levlen	\$ 72,208	\$ 3,048,454	\$ 3,120,661
<u>If all Levora</u>			
Levora	\$ 303,887	\$ 13,873,008	\$ 14,176,895

Net Cost to Rite Aid\*

	<u>21</u>	<u>28</u>	<u>Totals</u>
Levora	\$ 42,000	\$ 1,950,000	\$ 1,992,000
Nordette	\$ 131,564	\$ 6,232,100	\$ 6,363,664
Levlen	\$ 63,329	\$ 2,673,619	\$ 2,736,948
<u>If all Levora</u>			
Levora	\$ 133,760	\$ 6,106,400	\$ 6,240,160

Redacted

Average Patient Reimbursement - per Cycle

	<u>21</u>	<u>28</u>
Levora	\$ 22.72	\$ 22.72
Nordette	\$ 25.45	\$ 25.73
Levlen	\$ 24.26	\$ 24.26

Cost Per Cycle

	<u>21</u>	<u>28</u>
Levora	\$ 10.00	\$ 10.00
Nordette	\$ 21.22	\$ 21.49
Levlen	\$ 21.28	\$ 21.28

Redacted

Redacted

Reimbursement if brand was dispensed as Levora

	<u>21</u>	<u>28</u>	<u>Total</u>
Nordette	\$ 140,857	\$ 6,588,452	\$ 6,729,309
Levlen	\$ 67,611	\$ 2,854,390	\$ 2,922,001

Redacted

**Rite Aid - Compound Management Program vs Demulen****Assumptions**

Units based on Cycles dispensed.

Units are annualized based on data provided by account.

**Zovia Worksheet - Rite Aid**

<u>Pricing per Cycle</u>	<u>1/35mg 21</u>	<u>1/35mg 28</u>	<u>1/50mg 21</u>	<u>1/50mg 28</u>
Zovia	\$ 7.96	\$ 7.96	\$ 7.96	\$ 7.96
Demulen	\$ 20.76	\$ 20.97	\$ 21.14	\$ 21.35

**Annualized Sales**

	<u>1/35mg 21</u>	<u>1/35mg 28</u>	<u>1/50mg 21</u>	<u>1/50mg 28</u>	<u>Totals</u>
Zovia					
Cycles Dispensed	6,480	20,123	1,039	5,000	32,642
Dollars	\$ 51,581	\$ 160,179	\$ 8,270	\$ 39,800	\$ 259,830

	<u>1/35mg 21</u>	<u>1/35mg 28</u>	<u>1/50mg 21</u>	<u>1/50mg 28</u>	
Demulen					
Cycles Dispensed	21,696	67,368	3,480	16,740	109,284
Dollars	\$ 450,409	\$ 1,412,707	\$ 73,567	\$ 357,399	\$ 2,294,082

**Total Market**

	<u>1/35mg 21</u>	<u>1/35mg 28</u>	<u>1/50mg 21</u>	<u>1/50mg 28</u>	
Cycles Dispensed	28,176	87,491	4,519	21,740	141,926
Dollars	\$ 501,990	\$ 1,572,886	\$ 81,838	\$ 397,199.00	\$ 2,553,912

**Current Rite Aid Market Share**

	<u>1/35mg 21</u>	<u>1/35mg 28</u>	<u>1/50mg 21</u>	<u>1/50mg 28</u>	
Zovia	23%	23%	23%	23%	23%
Demulen	77%	77%	77%	77%	77%

**Market Share Conversion Rebates - Annualized: Paid on Moving Share to Zovia.**

<u>%Market Share Goals</u>	<u>% Gain Over Baseline</u>	<u>% Rebate</u>	<u>Rebate on Incr. Gain</u>
28%	5%	1%	\$ 565
33%	10%	2%	\$ 2,259
38%	15%	3%	\$ 5,084
43%	20%	4%	\$ 9,038
48%	25%	5%	\$ 14,122
53%	30%	6%	\$ 20,335
58%	35%	7%	\$ 27,678
63%	40%	8%	\$ 36,151
68%	45%	9%	\$ 45,754
73%	50%	10%	\$ 56,487

Redacted

# Rite Aid - Compound Management Program vs Demulen

## Gross Profit Analysis Worksheet

Third Party Payor Version

**Assumptions**

Units based on Cycles dispensed.

11/17/97

Units are annualized based on data provided by account.

### Zovia Worksheet - Rite Aid

Pricing per Cycle	1/35mg 21	1/35mg 28	1/50mg 21	1/50mg 28
Zovia	\$ 7.96	\$ 7.96	\$ 7.96	\$ 7.96
Demulen	\$ 20.76	\$ 20.97	\$ 21.14	\$ 21.35

Annualized Sales					Totals
Zovia	1/35mg 21	1/35mg 28	1/50mg 21	1/50mg 28	
Cycles Dispensed	6,480	20,123	1,039	5,000	32,642
Dollars	\$ 51,581	\$ 160,179	\$ 8,270	\$ 39,800	\$ 259,830
Demulen	1/35mg 21	1/35mg 28	1/50mg 21	1/50mg 28	
Cycles Dispensed	21,696	67,368	3,480	16,740	109,284
Dollars	\$ 450,409	\$ 1,412,707	\$ 73,567	\$ 357,399	\$ 2,294,082

Total Market	1/35mg 21	1/35mg 28	1/50mg 21	1/50mg 28	
Cycles Dispensed	28,176	87,491	4,519	21,740	\$ 141,926
Dollars	\$ 501,990	\$ 1,572,886	\$ 81,838	\$ 397,199	\$ 2,553,912

Current Rite Aid Market Share					
Zovia	23%	23%	23%	23%	23%
Demulen	77%	77%	77%	77%	77%

Per Cycle AWP	1/35mg 21	1/35mg 28	1/50mg 21	1/50mg 28
Zovia	\$ 24.85	\$ 24.85	\$ 27.71	\$ 27.71
Demulen	\$ 27.77	\$ 28.05	\$ 30.96	\$ 31.25

Redacted

<u>Current Reimbursement to Rite Aid</u>						Totals
		<u>1/35mg 21</u>	<u>1/35mg 28</u>	<u>1/50mg 21</u>	<u>1/50mg 28</u>	
Zovia	\$	151,464	\$ 470,355	\$ 26,782	\$ 128,882	\$ 777,482
Demulen	\$	575,401	\$ 1,802,987	\$ 101,896	\$ 494,353	\$ 2,974,636
<u>If all Zovia</u>						
Zovia	\$	658,586	\$ 2,045,015	\$ 116,484	\$ 560,379	\$ 3,380,463
 <u>Net Cost to Rite Aid*</u>						
		<u>1/35mg 21</u>	<u>1/35mg 28</u>	<u>1/50mg 21</u>	<u>1/50mg 28</u>	Totals
Zovia	\$	51,581	\$ 160,179	\$ 8,270	\$ 39,800	\$ 259,830
Demulen	\$	450,409	\$ 1,412,707	\$ 73,567	\$ 357,399	\$ 2,294,082
<u>If all Zovia</u>						
Zovia	\$	224,281	\$ 696,428	\$ 35,971	\$ 173,050	\$ 1,129,731

Redacted

Average Patient Reimbursement - per Cycle

	<u>1/35mg 21</u>	<u>1/35mg 28</u>	<u>1/50mg 21</u>	<u>1/50mg 28</u>
Zovia	\$ 23.37	\$ 23.37	\$ 25.78	\$ 25.78
Demulen	\$ 26.52	\$ 26.76	\$ 29.28	\$ 29.53

Redacted

Redacted

Reimbursement if brand was dispensed as Zovia

	<u>1/35mg 21</u>	<u>1/35mg 28</u>	<u>1/50mg 21</u>	<u>1/50mg 28</u>	<u>Total</u>
Demulen	\$ 507,122	\$ 1,574,660	\$ 89,702	\$ 431,497	\$ 2,171,484

Redacted